



**South Coast
Air Quality Management District**

Contract No. *****
Proposition 1B: Goods Movement
Emission Reduction Program
Port Vehicles
Lease-to-Own Program

This Contract consists of *** pages.

1. PARTIES - The Parties to this Contract are the South Coast Air Quality Management District (referred to here as "AQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and _____ (referred to here as "CONTRACTOR") whose address is _____.
2. RECITALS
 - A. AQMD is the local agency with primary responsibility for regulating stationary source air pollution in the South Coast Air Basin in the State of California. AQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. Through this Proposition 1B: Goods Movement Emission Reduction Program funded Contract, AQMD, the California Air Resources Board, the Port of Los Angeles (POLA), and the Port of Long Beach (POLB) desire to fund the incremental costs of certain cleaner than required equipment in order to generate cost-effective and excess air emission reductions within the South Coast Air Basin. Accordingly, AQMD desires to contract with CONTRACTOR for the project described in Attachment 1 - Statement of Work, attached hereto and made a part hereof.
 - B. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
 - C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
 - D. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - E. CONTRACTOR agrees that, in accordance with the California Air Resources Board's (CARB) Goods Movement Emission Reduction Program Guidelines, both the AQMD and CARB or their designee may monitor and enforce the terms of this Contract. Accordingly, CONTRACTOR further agrees that both the AQMD and CARB are Third Party Beneficiaries of the work funded hereunder. CONTRACTOR has agreed to perform under this Contract to generate excess emissions reductions.
 - F. CONTRACTOR acknowledges that this Contract may be funded by the AQMD, CARB, the U.S. Environmental Protection Agency (EPA), Port of Los Angeles and/or the Port of Long Beach, as shown in Table 1 of Attachment 1 – Statement of Work. Applicable funding agency-specific requirements are delineated throughout this Contract.
 - G. CONTRACTOR is entering into this Contract to receive incentive funds which will be used toward the purchase of ____ heavy duty diesel or LNG trucks as owner and lessor of said vehicles, which shall be leased to individual truck operators ("Lessee"). CONTRACTOR shall ensure the placement of the ____ trucks into regular service through a TRAC lease program, as described in Attachment 1 – Statement of Work. CONTRACTOR is responsible for ensuring that each Lessee

participating in the Prop 1B Goods Movement Emission Reduction Program (the "Program") shall maintain and operate his or her truck in compliance with the Program.

3. PERFORMANCE REQUIREMENTS

- A. CONTRACTOR warrants that it holds all necessary and required licenses and permits to perform this project. CONTRACTOR further agrees to immediately notify AQMD in writing of any change in its licensing status.
- B. CONTRACTOR shall submit reports to AQMD as outlined in Attachment 1 - Statement of Work. All reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. AQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
- C. CONTRACTOR shall ensure that all tasks set forth in Attachment 1 - Statement of Work are performed by itself or by a participating lessee (a "Lessee"); and shall ensure that no party shall engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.
- D. CONTRACTOR shall ensure the full, complete and faithful performance by the Lessees of any and all agreements and requirements of the TRAC lease program, including but not limited to the Lease Agreement to be entered into between CONTRACTOR and each Lessee.
- E. CONTRACTOR shall include, in each and every Lease Agreement entered into for these ____ trucks, the requirements for maintenance and operation of the vehicles, as set forth in Attachment 1 – Statement of Work.
- F. **Each vehicle under this Contract will only have one Lessee at a time.**
- G. **If any provision of the Lease Agreement or the Lease Rider entered into between CONTRACTOR and Lessee conflicts with the terms or requirements of this Contract, the provisions of the Contract shall prevail.**

4. TERM - The term of this Contract is from the date of execution by both parties, which shall be considered the effective date, to ***, unless further extended by amendment of this Contract in writing. No work shall commence until this Contract is fully executed by all parties. Notwithstanding the above end dates, the Contract term shall encompass both the project completion and project implementation/life periods, whichever is longer, to ensure that the AQMD and CARB can fully enforce the Contract terms during the life of this Goods Movement Emission Reduction Program-funded project.

- A. Project Completion – Project completion is the time frame starting with the date of Contract execution by both parties to the date of project completion, i.e., the date the project becomes operational. This is the time period when an engine, vehicle or piece of equipment is ordered, delivered and installed.
- B. Project Implementation/Life - The project implementation time frame equals the project life. The project implementation or project life equals the period of time during which each Goods Movement Emission Reduction Program-funded engine, vehicle or equipment is required to be operated and maintained according to the terms of this Contract.

5. TIME PERIOD FOR CONTRACT EXECUTION - This Contract must be signed by the CONTRACTOR and received by AQMD within twenty-one (21) days from the date it is sent by AQMD to the CONTRACTOR, otherwise this Contract shall be deemed null and void regardless of whether it was executed by CONTRACTOR. Time is of the essence in executing this Contract.
6. TERMINATION
- A. If the CONTRACTOR or one of the Lessees fails to comply with any term or condition of this Contract, or fails to perform work in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a material breach of this Contract. The AQMD shall either notify the CONTRACTOR that it must timely cure this breach, or provide written notification of AQMD's intention to terminate this Contract and invoke the remedies under Clause 16, if applicable. The AQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
 - B. Notwithstanding sub-Clause 6A, this Contract may be terminated prior to completion of the Contract term if the vehicles or equipment become inoperable through mechanical failure of components or systems and cannot be repaired or replaced and such failure is not caused by CONTRACTOR's negligence, misuse or malfeasance. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of AQMD, and such approval may require one or more of the remedies discussed in Clause 16 or any mechanism allowed by the Goods Movement Emission Reduction Program guidelines for early contract termination.
 - C. Notwithstanding sub-Clause 6A, AQMD also reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days written notice. Once such notice has been given, CONTRACTOR shall, except as otherwise directed by AQMD, discontinue any work being performed under this Contract and cancel any of CONTRACTOR'S orders for materials, facilities, and supplies in connection with such work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to the AQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by AQMD. Before expiration of the thirty (30) days written notice, CONTRACTOR shall promptly deliver to AQMD all copies of documentation and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR. AQMD shall notify CARB ten days prior to issuing a Notice to terminate the Contract without cause.
 - D. In the event proceedings in bankruptcy are commenced against CONTRACTOR or any Lessee, and CONTRACTOR or Lessee is adjudged bankrupt or a receiver is appointed and qualifies, the AQMD may terminate this Contract and all further rights and obligations hereunder by giving ten (10) days notice, in writing, in the manner specified in this Contract.
7. INSURANCE
- A. CONTRACTOR shall ensure that each Lessee obtains, and furnishes evidence to AQMD of, collision and comprehensive insurance with minimum coverage limits equal to the replacement value of the vehicle. AQMD shall be named as an additional insured on any such liability policy,

and thirty (30) days written notice prior to cancellation of any such insurance shall be given to AQMD.

- B. If any Lessee fails to maintain the required insurance coverage set forth above, AQMD reserves the right either to purchase such additional insurance and to seek reimbursement for the cost from CONTRACTOR, or to terminate this Contract for breach.
 - C. All insurance certificates should be mailed to: AQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **The AQMD Contract Number must be included on the face of the certificate.**
 - D. By execution of this Contract, CONTRACTOR agrees to ensure that each Lessee will maintain the insurance specified above. CONTRACTOR shall provide updates on the insurance coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of Contract performance. Failure to provide evidence of current coverage shall be grounds to terminate this Contract for breach.
8. INDEMNIFICATION - CONTRACTOR agrees to hold harmless and indemnify AQMD, the POLA, the POLB, and the California Air Resources Board (CARB), their officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, lawsuits, demands, judgments, legal fees or any other expenses which AQMD, POLA, POLB, and CARB, their officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage arising from the negligent or intentional conduct or omission of CONTRACTOR, its employees, its subcontractors, its agents, or a Lessee in the performance of this Contract.
9. USE OF VEHICLE AND EQUIPMENT - CONTRACTOR warrants that each of the trucks funded under this Contract are operated in accordance with the requirements set forth in Attachment 1 – Statement of Work.
10. COMPLIANCE WITH GOODS MOVEMENT EMISSION REDUCTION PROGRAM GUIDELINES DATED FEBRUARY 28, 2008, AS MODIFIED AND CLARIFIED IN ALL APPLICABLE ARB RESOLUTIONS AND EXECUTIVE ORDERS – CONTRACTOR warrants that the project upon which this Contract is based complies with all the Goods Movement Emission Reduction Program guidelines, as summarized below:
- A. The project, as a whole and for each of the trucks, is not required by any local, state and/or federal rule, regulation or MOU, including tenant agreements, currently in effect.
 - B. The low emissions technology has been certified or verified by CARB and meets the current NOx, PM and/or ROG requirements. For some projects, if the low emissions technology is not certified or verified, CONTRACTOR may request approval by CARB on a case-by-case evaluation. If approved by a CARB case-by-case evaluation, the method for emissions verification must be incorporated as part of the Contract in Attachment 1 – Statement of Work.
 - C. Rights to the emission reductions must not be claimed by any Lessee or participant as emission reduction credits or in an Averaging Banking and Trading Program. In addition, rights to the emission reductions may not be claimed by the engine or equipment manufacturer in any flexibility or “early introduction” incentive program.

- D. The new engine/equipment/vehicle must not have been purchased (i.e., paid for) prior to the effective date of the Contract. Note: CONTRACTOR is advised that pursuant to AQMD policy, the engine, vehicle and/or equipment must not have been ordered prior to the date of the AQMD Governing Board approval of the Contract.
 - E. For replacements and re-powers, the existing (old) engine must be destroyed and rendered useless. For replacements, frame rails of the old vehicle must be also cut. There must be no cannibalization of parts from the old engine. Engines must have a complete and fully visible and legible engine serial number in order to be eligible for an engine re-power. The destruction of the engine must be documented by the AQMD seeing the destroyed engine or the receipt from the qualified vehicle salvage yard. Engines without a visible and legible serial number may be re-powered if AQMD staff stamp the engine block with the Goods Movement Emission Reduction Program project number and the AQMD staff is present to personally verify engine removal from the project vehicle or equipment and the subsequent engine destruction.
 - F. The engines, vehicles and/or equipment funded under this Contract must remain in service for the project life and operate within the geographical boundaries of the State of California for the minimum usage specified in this Contract.
11. INCORPORATION OF GOODS MOVEMENT EMISSION REDUCTION PROGRAM APPLICATION – CONTRACTOR's Goods Movement Emission Reduction Program application is hereby incorporated by reference and made part of this Contract.
12. MAINTENANCE OF VEHICLES, ENGINES AND EQUIPMENT - CONTRACTOR shall ensure that each engine, vehicle or equipment funded under this Contract is maintained in accordance with the manufacturer's specifications for the life of the project. CONTRACTOR will be responsible for ensuring that no tampering with the engine, vehicle, or equipment occurs. CONTRACTOR shall be responsible for maintaining an odometer or other approved measuring device or method to track vehicle usage and demonstrate that the vehicle is operated according to the parameters used to calculate emissions reductions and cost effectiveness. If the odometer fails, the CONTRACTOR remains responsible for validating any mileage not recorded by the odometer. CONTRACTOR must arrange for the repair or replacement of the non-operating odometer or provide other documentation of equipment operating mileage acceptable to AQMD.
13. ON-SITE INSPECTIONS - AQMD, CARB, or their designee(s) shall have the right to inspect the equipment and/or records relating to the equipment during the term of the Contract.
14. INSPECTIONS – A pre-inspection shall be conducted by the AQMD on all vehicles to be replaced pursuant to this Contract. AQMD will verify that all requirements of the Goods Movement Emission Reduction Program regarding eligibility of existing vehicles are met. This includes the year of the vehicle to be replaced, operational condition, mileage, vehicle and engine identification. A post-inspection shall be conducted by the AQMD upon receipt of a new vehicle by dealer. Final payment will not be made until the AQMD verifies that the engine(s) and equipment listed in the Contract has/have been installed, that the engine is operational in the equipment or vehicle as stated in the Contract, and, where applicable, the baseline engine(s) or vehicle(s) has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old engine(s).

15. AUDIT RIGHTS - AQMD, CARB or a third party designee shall have the right to conduct a fiscal audit of the project and perform ongoing evaluations of the equipment during the life of the project.
16. REMEDIES AND ENFORCEMENT OF CONTRACT TERMS
- A. CONTRACTOR agrees that AQMD and CARB have the authority, jointly and severally, to enforce the terms of this Contract, and of any Lease Agreement related to this Contract, at any time during the project life to ensure that emission reductions under this Contract are obtained. AQMD and CARB will seek whatever legal, equitable and other remedies are available under State Law for the CONTRACTOR's failure to comply with the terms of this Contract, or to ensure compliance of a Lessee with the Lease Agreement, or with the Goods Movement Emission Reduction Program – Final Guidelines for Implementation, adopted February 28, 2008 requirements, and as modified and clarified in all applicable ARB Resolutions and Executive Orders, incorporated herein.
 - B. Nonperformance under this Contract includes, but is not limited to: failure by CONTRACTOR or one of the Lessees to meet Contract terms and conditions; non-operational or malfunctioning equipment; failure by CONTRACTOR or one of the Lessees to allow electronic monitoring device, or tampering with device or its data; insufficient, incomplete, or faulty documentation; failure of a Lessee to meet the terms and conditions of the Lease Agreement; and failure to provide documentation or reports in a timely manner.
 - C. CONTRACTOR is subject to all available remedies of law and equity for non-performance, which may include but is not limited to: recovery of all or a portion of the Program funds; fiscal penalties based on severity of non-performance; Contract cancellation; a ban on participation in future State or local incentive programs; and prohibition of equipment from State or local incentive program participation.
 - D. As a remedy for nonperformance of a Lessee, CONTRACTOR may arrange for the transfer of the lease for a Proposition 1B funded vehicle prior to the end of the Contract term and transfer legal obligations imposed by the lease to a new Lessee, upon written consent of AQMD. CONTRACTOR shall inform the party leasing the vehicle of these Contract requirements and the Contract term prior to completing the transaction. CONTRACTOR shall enter into a Lease Agreement with the new Lessee which assigns all of the rights, duties and obligations of the prior lease under Proposition 1B funding to the new Lessee; and shall provide copies of the new lease agreement to the AQMD within ten (10) business days of the transfer.
17. RECORDS AND RECORDS RETENTION – CONTRACTOR shall be responsible for maintaining records related to this project and retaining these records for at least three years after expiration of the term of the Contract.
18. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B. Non-compliance with the reporting requirements of this Contract shall result in the implementation of on-site monitoring by the AQMD.

19. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.
20. GOODS MOVEMENT EMISSION REDUCTION PROGRAM DISCLOSURE STATEMENT - CONTRACTOR hereby certifies that, after execution of this Contract, CONTRACTOR shall not submit an application to, or execute another contract, for any additional grant of funds for the same equipment subject to this Contract. CONTRACTOR shall include in all lease agreements with Lessees a requirement that the Lessee shall not apply, or contract, for grant funding for the same equipment subject to this Contract. CONTRACTOR acknowledges that violation of this certification shall, at a minimum, result in CONTRACTOR being disqualified from receiving funding for such equipment from all sources and may further result in CONTRACTOR being banned from submitting any future applications to any and all Goods Movement Emission Reduction Program solicitations. In addition, as a violation of law, CARB and the AQMD may levy fines and/or seek criminal charges. CONTRACTOR to initial here acknowledging compliance _____.
21. PAYMENT
- A. AQMD shall reimburse CONTRACTOR an amount not to exceed *** Dollars (\$***) as provided in Attachment 2, Payment Schedule, to this Contract. CONTRACTOR shall be entitled to such reimbursement for purchase of the vehicles, engines and/or equipment specified in Attachment 1 - SOW. Payment shall be based upon invoices for the actual cost of the new equipment, equipment retrofit(s) or equipment re-power(s) and successful completion of a post inspection by AQMD. Invoices shall include, at a minimum, identification of the vehicle manufacturer, price of the vehicle including any taxes, delivery fees and other costs, identification of the vehicle make and model, model year and fuel type. Payment of the above amount shall be made directly to the engine dealer or distributor upon submission of an itemized invoice from the CONTRACTOR requesting that such direct payment be made.
 - B. CONTRACTOR may also choose to have the payments from AQMD required under this Contract made directly to the vehicle seller.
 - C. Reimbursement and/or direct payment under this Contract shall occur within thirty (30) business days of AQMD's receipt of an itemized invoice from the vehicle seller or paid invoices for new vehicles and completion of the post-inspection audit required under Clause 15. [Note: For payment under the direct payment option in sub-Clause 21B above, the post-inspection requirements do not include the scrappage requirement.] Invoices must itemize all charges for equipment, materials, supplies, subcontractors and other charges, as applicable. Reimbursement for equipment, materials, supplies, subcontractors and other charges will be made in accordance with Attachment 2 – Payment Schedule. Supporting documentation and proof of payment must be provided for all individual charges (with the exception of direct labor charges provided by the CONTRACTOR). Each invoice must be prepared in duplicate, on company letterhead, and list AQMD's Contract number, period covered by invoice, and CONTRACTOR's Social Security Number or Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Goods Movement Emission Reduction Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
 - D. Any payments required under this Contract are contingent upon AQMD's receipt of funds from CARB and, if applicable, EPA, POLA, and/or POLB, in the amount of the required payments.

- E. Any funds not expended as contracted for or committed during the term of the Contract, as described in Attachment 1 - Statement of Work must be returned to AQMD. CONTRACTOR agrees that it is not entitled to the remaining funds and that AQMD will de-obligate the Contract of the balance of funds upon written notice to the CONTRACTOR. CONTRACTOR to initial here acknowledging consent to de-obligation of non-expended funding. _____
22. AQMD LIEN RIGHTS - CONTRACTOR hereby grants AQMD a security interest in any and all equipment or vehicles purchased in whole or in part by funding provided by AQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that AQMD shall have all lien rights as a secured creditor on any and all equipment and/or vehicles purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The AQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that AQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the equipment and/or vehicles that are the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify AQMD within 10 business days of such filing.
23. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs) - No MSERCs resulting from Goods Movement Emission Reduction Program funded projects may be generated and/or sold. All emission reductions, created as a result, in whole or in part, from the expenditure of Goods Movement Emission Reduction Program funds shall not be converted into tradable credits.
24. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

AQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Goods Movement Contract Administrator, Technology Advancement

CONTRACTOR:

25. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees but not those or any Lessee or the AQMD, as well as cost of their vacation, vacation replacements, sick leave, severance pay and pay for legal holidays.
- B. Neither CONTRACTOR's, nor any Lessee's officers, employees, agents, representatives or subcontractors shall in any sense be considered employees or agents of AQMD or CARB, nor shall CONTRACTOR, its officers, employees, agents, representatives or subcontractors be entitled to or

eligible to participate in any benefits, privileges, or plans, given or extended by AQMD to its employees.

- C. CONTRACTOR shall comply with all state and federal laws and regulations with respect to its employees, but not those of any Lessee or AQMD, throughout the term of this Contract, including state minimum wage laws, workers' compensation, and OSHA requirements.

26. PUBLICATION

- A. AQMD shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from AQMD in connection with performance under this Contract.
- B. Information, data, documents, photographs or reports developed by CONTRACTOR for AQMD, pursuant to this Contract, shall be part of AQMD'S public record unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to AQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
 - i. "This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management AQMD (AQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of AQMD. AQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. AQMD has not approved or disapproved this report, nor has AQMD passed upon the accuracy or adequacy of the information contained herein."
- C. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.
- D. CONTRACTOR shall ensure that the Goods Movement Emission Reduction Program is clearly identified as a sponsor or source of funding in all of its documents, reports, brochures, advertising and other material relating to this project.

27. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this Clause and shall include in each such subcontract language similar to this Clause.

28. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or AQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

29. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract or any Lease Agreement, each party shall bear its own attorneys' fees and costs.
30. FORCE MAJEURE - AQMD, CARB or CONTRACTOR shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of AQMD, CARB or CONTRACTOR.
31. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
32. HEADINGS - Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
33. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
34. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
35. COMPLIANCE WITH SINGLE AUDIT ACT REQUIREMENTS - [THIS CLAUSE IS ONLY APPLICABLE IF AQMD FUNDS ARE INCLUDED IN THIS CONTRACT AS INDICATED IN TABLE 1 OF ATTACHMENT 1-STATEMENT OF WORK.]

During the term of the Contract, and for a period of three (3) years from the date of Contract expiration, and if requested in writing by the AQMD, CONTRACTOR shall allow the AQMD, its designated representatives and/or the cognizant Federal Audit Agency, access during normal business hours to all records and reports related to the work performed under this Contract. CONTRACTOR assumes sole responsibility for reimbursement to the Federal Agency funding the prime grant or contract, a sum of money equivalent to the amount of any expenditures disallowed should the AQMD, its designated representatives and/or the cognizant Federal Audit Agency rule through audit exception or some other appropriate means that expenditures from funds allocated to the CONTRACTOR were not made in compliance with the applicable cost principles as contained in 48 CFR Part 31, regulations of the funding agency, or the provisions of this Contract.

36. FEDERAL REQUIREMENTS – [THIS CLAUSE IS ONLY APPLICABLE IF AQMD FUNDS ARE INCLUDED IN THIS CONTRACT AS INDICATED IN TABLE 1 OF ATTACHMENT 1-STATEMENT OF WORK.]

This Contract is funded partly through a grant from the U.S. Environmental Protection Agency (EPA). As such, CONTRACTOR shall:

1. Fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." CONTRACTOR acknowledges that failing to disclose information as required at 2 CFR Part 180.355 may result in the delay or negation of this Contract or pursuance of legal remedies. CONTRACTOR shall notify AQMD immediately if CONTRACTOR learns that it failed to disclose information earlier, as required under 2 CFR Part 180.355, or due to changed circumstances, CONTRACTOR now meets any of the criteria in 2 CFR Part 180.355. [APPLIES ONLY FOR CONTRACTS AWARDED \$25,000 OR GREATER.]
2. Fully comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. CONTRACTOR shall complete Attachment 4 - *Disclosure of Lobbying Activities* (SF LLL), attached herein and incorporated herein by reference. The completed Attachment 4 shall be submitted to AQMD along with the executed contract. CONTRACTOR shall inform the AQMD of any material changes to a previous filing, pursuant to 31 U.S.C. section 1352, by completing and submitting an additional Attachment 4 - *Disclosure of Lobbying Activities* form (SF LLL). [APPLIES ONLY FOR CONTRACTS AWARDED \$100,000 OR GREATER]
3. Make good faith efforts as required under 40 CFR Part 33.301 to ensure that small, minority and women's business enterprises have the opportunity to compete for procurements funded under this Contract.

37. CITIZENSHIP AND ALIEN STATUS

- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations.
- B. Notwithstanding Clause A above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
- C. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless AQMD and CARB, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or AQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

38. APPROVAL OF SUBCONTRACTS

- A. If CONTRACTOR intends to subcontract a portion of the work under this Contract, written approval of the terms of the proposed subcontract(s) shall be obtained from AQMD'S Executive Officer or designee prior to execution of the subcontract. No subcontract charges will be reimbursed unless such approval has been obtained.
- B. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or cost schedule shall also require the written approval of the Executive Officer or designee prior to execution.
- C. The sole purpose of AQMD'S review is to insure that AQMD'S contract rights have not been diminished in the subcontractor agreement. AQMD shall not supervise, direct, or have control over, or be responsible for, subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure of subcontractor to comply with any local, state, or federal laws, or rules or regulations.

39. TAX IMPLICATIONS FROM RECEIPT OF GOODS MOVEMENT EMISSION REDUCTION PROGRAM FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Goods Movement Emission Reduction Program.

40. ENTIRE CONTRACT

- A. This Contract represents the entire agreement between the Parties. A Spanish-translated version of this Contract and its Attachments may be provided to CONTRACTOR for information purposes only. The English-language Contract and Attachments shall govern at all times, and shall be the only documents which constitute the agreement between the Parties.
- B. By executing this Contract, CONTRACTOR understands and agrees to operate the engine, vehicle, or equipment according to the terms of the Contract and to cooperate with the AQMD and CARB implementation, monitoring, enforcement and other efforts to assure the emissions benefits are real, quantifiable, excess and enforceable. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

By: _____

Barry R. Wallerstein, D.Env., Executive Officer

By: _____

Name:

Title:

Date: _____

Date: _____

APPROVED AS TO FORM:
Kurt R. Wiese, General Counsel

By: _____

//Goods Movement Emission Reduction Program – Prop 1B
Lease-to-Own Program
v. CSS-LMC, rev. 11-17-09